

(1990) 05 CAL CK 0044
In the Calcutta High Court
Case No : Criminal Revision No. 157 of 1985

Bengal Tools Ltd.

APPELLANT

Vs

Registrar of Companies and Another

RESPONDENT

Date of Decision : 08-05-1990

Acts Referred:

Companies (Acceptance of Deposits) Rules, 1975 — Rule 11, 3A
Companies Act, 1956 — Section 58A
Criminal Procedure Code, 1973 (CrPC) — Section 401, 482

Citation : (1991) 1 CALLT 321 : (1991) 71 CompCas 85 : (1991) 1 Crimes 9 : 95 CWN 138

Hon'ble Judges : J.N. Hore, J

Bench : Single Bench

Advocate : A.R. Saha, Dipak Kumar Sengupta, for the Appellant; B.R. Ghosh and Dipak Mukherjee, for the Respondent

Judgement

J.N. Hore, J.—This is an application u/s 401 and Section 482 of the Code of Criminal Procedure, 1973, for setting aside the order dated December 27, 1984, passed by the learned Chief Judicial Magistrate, Calcutta, in Case No. C/3532 of 1984 pending in his court and for quashing further proceedings in the said case.

2. On December 27, 1984, the Registrar of Companies, West Bengal, filed a petition of complaint in the court of the learned Chief Metropolitan Magistrate, Calcutta, against the petitioner, M/s. Bengal Tools Ltd., and six of its directors alleging commission of an offence under Rule 11 read with Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975, and Section 58A of the Companies Act, 1956. On December 27, 1984, the learned Chief Metropolitan Magistrate, Calcutta, took cognizance of the alleged offence and issued process u/s 58A of the Companies Act read with Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975, against the petitioner company and six directors, fixing February 14, 1985, for appearance. Being aggrieved by the said order, the petitioner moved this court in revision and obtained the present rule.

3. Mr. Sengupta, the learned advocate for the petitioner, contended that the learned Chief Metropolitan Magistrate acted mechanically without application of judicial mind. The impugned order was passed upon a cyclostyled order sheet supplied by the prosecution embodying the order in pursuance whereof cognizance was taken and as such the impugned order cannot be sustained in law. In support of his contention, he has referred to an unreported decision of a Division Bench of this court presided over by P. C. Barooah J., as he then was, in Criminal Revision No. 1475 of 1979 (Bharat Sugar Mills Limited v. Registrar of Companies, West Bengal). It appears that the learned Chief Metropolitan Magistrate passed the impugned order in a cyclostyled order sheet embodying the order. Only the names of the accused persons and sections of the Companies Act and the date of appearance were filled up. The names of the accused persons and sections of the Companies Act are written in a different ink and the order number and the date of appearance which apparently were written by the court officer are in a different ink. So, the contention of Mr. Sengupta that the cyclostyled order sheet embodying the order was supplied by the prosecution and the learned Chief Metropolitan Magistrate merely signed on it without application of his mind has considerable force. Be that as it may, even if it is assumed that, for the sake of convenience, the order sheet was cyclostyled by the office of the learned Chief Metropolitan Magistrate under his instructions, it appears from another circumstance that the learned Chief Metropolitan Magistrate did not apply his mind and acted mechanically. For violation of the provisions of Rule 3A, the company or its directors are liable for prosecution under Rule 11 of the Companies (Acceptance of Deposits) Rules, 1975. The complainant also prayed for summons under Rule 11 read with Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975. Process should, therefore, have been issued by the learned Chief Metropolitan Magistrate under Rule 11 read with Rule 3A of the Companies (Acceptance of Deposits) Rules, 1975. This was not done and the process was issued u/s 58A of the Companies Act read with Rule 3A. It clearly shows that the learned Chief Metropolitan Magistrate acted mechanically without proper application of his mind. On this ground alone, this application is to be allowed.

4. The certified copy of the order in Criminal Revision No. 1475 of 1979 has been produced before us. In that case, the learned Chief Metropolitan Magistrate on receipt of the complaint issued summons against the accused company and its directors u/s 204(1) of the Companies Act, 1956. It has been held that for violation of Section 204(1) of the Companies Act, a company or its directors are liable for prosecution u/s 629A of the Act. Process should, therefore, have been issued by the learned Chief Metropolitan Magistrate u/s 629A read with Section 204(1) of the Act. As this was not done, it was held that the learned Chief Metropolitan Magistrate acted mechanically without proper application of his mind and, on this ground, the application was allowed and the impugned proceeding was quashed. The ratio of the decision in that case is clearly applicable to the facts of the present case.

5. The rule is, therefore, made absolute. The impugned order dated December 27, 1984, is set aside and the impugned proceeding is quashed. I, however, make it clear that the quashing of the proceeding will not prevent the opposite party from filing a fresh compliant, if permissible, in accordance with law.